

C-351-604
Sunset Review
Public Document
O3/MGS

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of Expedited
Sunset Review of the Countervailing Duty Order on Brass Sheet and
Strip from Brazil

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty (“CVD”) order covering brass sheet and strip from Brazil.¹ We recommend that you approve the positions we have developed in the “Discussion of Issues” section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

In the original investigation, the Department of Commerce (“the Department”) received information on two Brazilian producers and exporters that accounted for substantially all exports of brass sheet and strip to the United States during the period of investigation. In its final affirmative CVD determination, the Department concluded that the Government of Brazil (“GOB”) was providing countervailable subsidies to exporters of the subject merchandise through four programs: (1) Preferential Working Capital Financing for Exports (“CACEX”); (2) Income Tax Exemption for Export Earnings; (3) Export Financing Under the CIC-CREGE 14-11

¹ The Department did not receive a substantive response from any government or respondent interested party to this proceeding.

Circular; and (4) Import Duty Exemption Under Decree-Law 1189 of 1979. See Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip From Brazil, November 10, 1986 (51 FR 40837). We estimated the net subsidy to be 6.13 percent ad valorem, and, on the basis of a program-wide change in the CACEX program which occurred prior to the preliminary determination, we established a cash deposit rate of 3.47 percent ad valorem for all manufacturers, producers, or exporters of brass sheet and strip from Brazil.

The Department has since conducted one administrative review of this CVD order, covering the period January 1, 1990, through December 31, 1990. In the Department's preliminary results of the administrative review, and supported by the Department's final results of the administrative review, the Department determined that each of the four programs found to provide countervailable benefits in the investigation had been terminated. Preferential Working Capital Financing for Exports was terminated, effective August 30, 1990, by Central Bank Resolution 1744. Loans under this program were officially suspended on February 22, 1989, until the program was terminated. The program of Income Tax Exemption for Export Earnings, which eliminated the tax exemption and established a prevailing tax rate of 30 percent for domestic and export earnings for 1991, was effectively terminated by Decree Law 8034, April 12, 1990. Export Financing Under the CIC-CREGE 14-11 Circular (which became CIC-OPCRE 6-2-6) was deemed to be terminated as it had set interest rates equal to those of market rate loans as of September 20, 1988, and there is no evidence of current or future changes. Finally, the Import Duty Exemption Under Decree Law 1189 was officially terminated by the GOB by Decree Law 7988, Article 7, on December 28, 1989. In its final results of review, the Department noted that substantial documentation, including verification reports, confirmed the termination without replacement of these four countervailable subsidy programs. See Brass Sheet and Strip From Brazil; Final Results of Countervailing Duty Administrative Review, 56 FR 56631 (November 6, 1991). As a result of the review, the Department set the duty deposit at zero.

On May 1, 2000, after conclusion of the first sunset review, the Department published a notice of continuation of the CVD order on brass sheet and strip from Brazil. See Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany, and Japan, 65 FR 25304, as amended, Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany and Japan: Amended Notice of Continuation of Antidumping Duty Orders and Countervailing Duty Orders, 65 FR 33295 (May 23, 2000). No additional reviews have been conducted.

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended ("the Act"), the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any

change in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("ITC") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("SCM").

Below we address the substantive responses of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In their substantive response, the domestic interested parties note that in the only administrative review conducted of this order, the Department determined that all of the programs found countervailable in the investigation had been terminated without replacement. While acknowledging that termination of these programs without replacement might result in no likelihood of a resumption or continuation of a countervailable subsidy, the domestic interested parties request that the Department reconsider in this sunset review the legal method by which the Brazilian government eliminated its programs and, if these programs ended, whether the Brazilian government is likely to reinstate them.

In addition, the domestic interested parties argue that, consistent with the Department's determination in the first sunset review, if the Brazilian government does not participate in this second sunset review, the Department should again conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

Department's Position

As in the first sunset review, in the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. In the absence of participation by the GOB or any other respondent interested party, the Department finds that revocation of the CVD order on brass sheet and strip from Brazil would be likely to lead to continuation or recurrence of a countervailable subsidy to all respondent interested parties. This finding is consistent with the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act, wherein it is made clear for determinations regarding the likelihood of continuation or recurrence of a countervailable subsidy that "an adequate response to an initial request for information must include a response from the foreign government in question. The participation of the foreign government in question is indispensable, because only that government is in a position to explain its actions and intentions with respect to present and future subsidization." SAA at 880.

Because the Department finds likelihood of continuation or recurrence of a countervailable subsidy from the lack of participation by the foreign government in question, we are not reconsidering the legal method by which the programs were eliminated or whether the Brazilian government is likely to reinstate the programs.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties assert that the Department normally will select the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. Therefore, the domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail should be the country-wide rate of 3.47 percent, the rate set forth in the original investigation.

Department's Position

The Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. See SAA at 890 ("The Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place."). However, this rate may not always be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, with no residual benefits, or where the Department has found new countervailable programs to exist. In such cases, the Department may make adjustments to the investigation rate to reflect intervening changes. As acknowledged by the domestic interested parties, in this case, the Department found that all of the programs found in the investigation to have provided countervailable subsidies have been terminated, without likelihood of reinstatement. Absent information on usage of other countervailable subsidy programs, the Department has no basis on which to determine the net countervailable subsidy likely to prevail.

Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide information to the ITC concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the SCM. Since all of the known countervailable programs have been terminated, there is no nature of the subsidy to report to the ITC.

Final Results of Review

We determine that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. However, as a result of termination of all known countervailable programs, the Department is unable to determine the net countervailable subsidy likely to prevail.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish in the final results of review in the Federal Register.

AGREE: _____

DISAGREE: _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)